

REMARKS

Applicant and the undersigned are most grateful for the time and effort accorded the instant application by the Examiner. Claims 1-20 were pending at the time the outstanding Office Action was issued. Claims 11-20 were withdrawn pursuant to restriction requirement. Remaining Claims 1-10 stand rejected. Of these remaining claims, Claims 1 and 6 are independent claims, and the remaining claims are dependent claims. In response, Applicant has filed this Amendment, wherein no changes are made to the claims. The Office is respectfully requested to reconsider the rejections presented in the outstanding Office Action in light of the foregoing amendment and the following remarks.

Preliminary Matters

At the time the application was filed, Applicant also submitted Petition to Accept Color Drawings. Applicant has not yet received a decision on the Petition. Clarification is respectfully requested regarding the status of the Petition and the current state of the drawings.

Rejections under 35 U.S.C. 102(b or e)/103(a)

Claims 1-10 stand rejected under 35 USC 102(b or e) as being anticipated by Broselow (6,132,416) or in the alternative under 35 USC 103(a) as obvious over Broselow in view of Fischer (5,289,919). Applicants respectfully request reconsideration and withdrawal of these rejections.

As an initial matter, in order to more clearly indicate the usage and components of the instant invention, Applicants undertake to explain an embodiment of the present invention for medication organization and delivery. In various preferred embodiments, there is described color-distinctive components that, when combined with an apparatus and system of use, enable insulin dependent diabetics a safe and easy way to control their blood glucose levels. It will be appreciated that the present invention is useful for diabetics who would benefit from the use of a sliding scale of insulin to control their diabetes. (Specification, page 9, lines 7-11). More specifically, the system is designed so that:

At medication time, the person with diabetes removes the appropriate drawer FIG 7B from the main storage unit. The diabetic then determines his/her blood glucose level using a glucometer of choice. The glucometer displays the diabetic's blood glucose result. The diabetic then selects the label color, from the selection of color-coded labels on medication chart 20, that matches the range for this blood glucose reading. He/she then chooses the color-distinctive syringe 26 that corresponds to the chart color of his/her blood glucose level 32, thus administering the correct dose of insulin³⁴.

(Specification, page 16, lines 3-9). This specific example is illustrative of the design and intentions of the present invention with respect to aiding in proper dosage delivery for patients independent of a professional medical caregiver.

Turning now to a discussion of the references cited by the Examiner in rejecting the instantly claimed invention, the Examiner points to Broselow as teaching various aspects of Applicants' claimed invention. Surely the Examiner intended to provide a rejection solely under 35 USC 103, as the Examiner states that "Broselow may not teach an arrangement for organizing the delivery arrangements...or ... the claimed corresponding indicia" (Office Action, page 3).

As these are two elements of independent claim 1, Applicants respectfully submit that the applied art does not anticipate the present invention because, at the very least, "[a]nticipation requires the disclosure in a single prior art reference of each element of the claim under construction." W.L. Gore & Associates, Inc. v. Garlock, 721 F.2d 1540, 1554 (Fed. Cir. 1983); see also In re Marshall, 198 U.S.P.Q. 344, 346 (C.C.P.A. 1978). Therefore, Applicant respectfully requests reconsideration and withdrawal of these rejections under 35 USC 102.

Regarding the 35 USC 103 rejections, Applicant respectfully submits that the Examiner is no doubt aware of the improper nature of mere conclusory statements such as: "Elements of the claims not disclosed in the references, but that are nonetheless conventional, would have been obvious to provide to the apparatus of Broselow for the purpose of improving the same." (Office Action, page 3-4). And that the proper obviousness rejection is laid out in the MPEP as:

The key to supporting any rejection under 35 U.S.C. 103 is the clear articulation of the reason(s) why the claimed invention would have been obvious. The Supreme Court in *KSR* noted that the analysis supporting a rejection under 35 U.S.C. 103 should be made explicit. The Court quoting *In re Kahn*, 441 F.3d 977, 988, 78 USPQ2d 1329, 1336 (Fed. Cir. 2006), stated that "[R]ejections on obviousness cannot be sustained by mere conclusory statements; instead, there must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness." *KSR*, 550 U.S. at ___, 82 USPQ2d at 1396.

(MPEP § 2141). This standard makes it clear that the Examiner must articulate rationale as well as findings of fact that support the rationale relied upon in the obviousness rejection. Applicant respectfully submits that should the Examiner maintain the present rejections that he must provide another non-final office action, which provides for the specific grounds for rejection preferably with citations to the references where the

elements of the instantly claimed invention are taught or suggested. (See MPEP § 706.07(a)).

Nonetheless, Applicant notes the following regarding the teachings of the cited references and their inability to teach or suggest all of the elements of the instantly claimed invention.

As best understood, Broselow is directed to a method and apparatus of determining proper medication dosage for a patient based on weight range and assigning a color to each of the respected weight related values in order to provide proper dosage for a given medication. (Broselow, Abstract). It is respectfully submitted that at the very least, there is no teaching or suggestion in the reference of organization arrangements or indicia as mentioned above.

Regarding the Fischer reference, Applicant respectfully submits that it is not clear as to what elements of the instantly claimed invention that the Examiner has cited the reference as teaching. The Examiner states that: "Fischer is cited for emphasis to show that it is conventional to store color coded syringe tips in containers that are color coded to match the syringe tip colors." However the Examiner fails to articulate the parts of the reference, which provide support for this conclusory statement.

As best understood, the Fischer reference appears to provide for an assembled kit for use by dental professionals in order to organize a variety of dental devices for use in certain procedures in a dentist's office. The tips and connectors of the devices appear to be interchanged not in order to aid medication delivery, but rather according to the different procedures. Applicant respectfully submits that not only does the reference fail

to provide for the elements lacking in Broselow discussed above, but it also appears to be inapplicable art.

Due to the current improper nature of the obviousness rejections, Applicant further respectfully reserves the right to argue the specific merits of the 103 rejections including the Broselow and Fischer references when the specific rationale and support are clarified by the Examiner. In the alternative, Applicant respectfully requests reconsideration and withdrawal of the rejections under 35 USC 103 for the reasons provided above.

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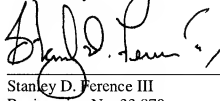
Conclusion

In view of the foregoing, it is respectfully submitted that Independent Claims 1 and 6, fully distinguish over the applied art and are thus allowable. By virtue of dependence from what are believed to allowable independent claims 1 and 6, it is thus also submitted that Claims 2-5, and 7-10 are also allowable at this juncture.

In summary, it is respectfully submitted that the instant application, including Claims 1-10, is presently in condition for allowance. Notice to the effect is hereby earnestly solicited.

Should the Examiner conclude that the presently submitted claims are not in condition for allowance, the Examiner is respectfully requested to **contact the undersigned at the telephone number listed below before issuing a further Office Action.**

Respectfully submitted,



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